IN THE HIGH COURT OF BOMNBAY AT GOA

WRIT PETITION NO.476/2003

1. Mr. Vero Nunes,
son of late Mr. Luis Joao
Nunes Dias, major,
residing at House No.65,
Mala, Portais, Panaji, Goa.

2. Mrs. Fatima Nunes, wife of
Mr. Vero Nunes, major,
residing at House No.65,
Mala, Portais, Panaji, Goa. ..... Petitioners.

V/s.

1. Mr. Eurico Erasmo Nunes,
alias Erasmo Eurico Nunes,
son of Mr. Luis Joao Nunes
Dias, major, residing at
House No.65, Mala,
Portais, Panaji, Goa.

2. Mrs. Ana Rita Vera Nunes,
wife of Mr. Eurico Erasmo Nunes,
alias Erasmo Eurico Nunes,
major, residing at House
No.65, Mala, Portais, Panaji,Goa.

3. Mrs. Lidia Euticia Nunes,
daughter of Mr. Luis Joao
Nunes Dias, major, residing at
Venusta Classic, Block C,
Behind Canning Factory,
Aquem, Alto, Margao, Goa.

4. Mr. Querobino Elizabeth
Galdino D'Souza, husband of
Mrs. Lidia Euticia Nunes,
major, residing at Venusta Classic,
Block C, Behind Canning Factory,
Aquem, Alto, Margao, Goa.

5. Mrs. Jucunda Nunes,
daughter of Mr. Luis Joao
Nunes Dias, major, residing at
House No.99, Deusa, Chicalim,
Mormugao Taluka,
Mormugao, Goa.

6. Mr. Cosme Antonio Eleuterio
Azaredo Silveira, husband of

Mrs. Jucunda Nunes, major,
residing at House No.99,
Deusa, Chicalim, Mormugao
Taluka, Mormugao, Goa.

7. Mr. Savio Nunes,
son of Mr. Luis Joao Nunes Dias,
major, residing at Bambolim
Beach Resort, Vadgalim,
Bambolim, Tiswadi, Goa.

8. Mrs. Zerina Nunes,
wife of Mr. Savio Nunes, major,
residing at Bambolim Beach
Resort, Vadgalim, Bambolim,
Tiswadi, Goa. ..... Respondents.

Mr. F.E. Noronha, Advocate for the petitioners.

Mr. F.M. Reis, Advocate for respondents No.1, 2, 5 & 6.

CORAM : A.M. KHANWILKAR, J.

DATE : DECEMBER 5, 2003.

ORAL ORDER :

This writ petition under Article 227 of the Constitution of India takes exception to the Order passed by the Civil Judge, Sr. Division, Panaji dated April 25, 2000 in Inventory Proceedings No.95/96/A. Against the impugned order, the petitioner initially filed a civil revision application. However, in view of the amendment to the relevant provisions of the Code of Civil Procedure, the said civil revision application was not maintainable, as upon allowing the revision application, the proceedings pending before the lower Court could not

be finally disposed of. In the circumstance, this Court on July 17, 2003 allowed the petitioners to withdraw the said revision application with liberty to take out appropriate proceedings to which they may be entitled. This Court also kept all contentions of the parties open to be canvassed in the proposed proceedings.

2. When the matter is called out today for admission, the Counsel for the respondents No.1,2, 5 and 6 submits that in fact, the respondents had raised a preliminary objection regarding maintainability of the civil revision against the impugned order as the petitioners could have taken recourse to the remedy of appeal from order, as the impugned Order was appealable. However, that question was to be decided while finally disposing of the civil revision application. But, as the civil revision application was not maintainable and came to be withdrawn, even that question has been kept open vide order dated July 17, 2003. Indeed, there can be no dispute that the impugned Order is an interlocutory order passed in the inventory proceedings. Against that order, the petitioners could have taken recourse to an appeal from order. Since the preliminary objection regarding maintainability of this writ petition on the ground that the petitioners had alternate and efficacious remedy is taken, this petition is disposed of with liberty to the

petitioners to take recourse to remedy of appeal from order, if so advised. That, however, be done within one week from today. If such an appeal is preferred, the Counsel for the respondents concedes that the respondents will not raise the plea of limitation in the said appeal from order as the petitioners have been pursuing their remedy before this Court immediately after passing of the impugned order. With these observations, the petition is disposed of.

A.M. KHANWILKAR, J.

ssm.6